

**NIXON PEABODY**<sup>LLP</sup>  
ATTORNEYS AT LAW

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January 25, 2008

**VIA ECF**

Honorable A. Kathleen Tomlinson, U.S.M.J.  
United States Courthouse  
100 Federal Plaza  
Central Islip, New York 11722-9014

**RE: Ireh v. Nassau University Medical Center et al., 06 Civ. 0009 (LDW) (AKT)**

Dear Magistrate Judge Tomlinson:

This firm represents Defendants Nassau University Medical Center ("NUMC") and Nassau Health Care Corporation ("NHCC") (collectively "Defendants") in the above-referenced matter. We write in response to Plaintiff's January 22, 2008 letter motion seeking to quash a subpoena served on non-party Hospital of Saint Raphael. Plaintiff argues, in entirely conclusory fashion, that Defendants' subpoena seeks irrelevant, privileged, duplicative and prejudicial material, yet he fails to articulate any specific reasons why the information sought by Defendants is not discoverable, material and relevant to the defense of Plaintiff's claims in this action. For all the reasons set forth herein, Plaintiff's motion to quash should be denied.

On or about December 18, 2007, Defendants served on Plaintiff's counsel, by facsimile and regular mail, a Notice of Subpoena indicating that a subpoena seeking personnel, employment and academic records would be served on non-party Hospital of Saint Raphael on December 28, 2007. (Exhibit "A"). Receiving no response from Plaintiff or a motion to quash, on December 28, 2007, Defendants served the aforementioned subpoena, setting a January 11, 2008 return date. (Exhibit "B"). After being contacted by Janeanne Lubin-Szafranski, Esq., Hospital of Saint Raphael's Vice President and General Counsel, an identical subpoena was served on January 4, 2008, indicating Ms. Lubin-Szafranski as the custodian of records. (Exhibit "C"). The Hospital of Saint Raphael voluntarily accepted service of the subpoena, did not object or raise any issues to the documents sought therein and was prepared to produce responsive documents when served with the instant motion.

**Plaintiff's Motion to Quash is Untimely**

Federal Rule of Civil Procedure ("FRCP") 45(c)(3) requires motions to quash or modify a subpoena be "timely". In general, courts have interpreted "timely" to mean within the time set in the subpoena for compliance. See Innomed Labs, LLC v. Aha Corp., 2002 U.S. Dist. LEXIS 22194, at \*9 (S.D.N.Y. Nov. 15, 2002) ("Although Rule 45(c)(3)(A)(iv) requires that the motion to quash be timely without defining what 'timely' is, it is reasonable to assume that the motion to quash should be brought before the noticed date of the scheduled deposition."); Nova Biomedical Corp. v. i-STAT Corp., 1998 U.S. Dist. LEXIS 14638, at \*11 (S.D.N.Y. Sept. 17, 1998) ("[S]ervice anytime

Honorable A. Kathleen Tomlinson, U.S.M.J.  
 January 25, 2008  
 Page 2

before the subpoenas' return date should be considered timely."); see also 9 Moore's Federal Practice § 45.50 (Supp. 2003) (motion to quash must precede return date). Plaintiff has been aware of Defendants' subpoena since December 18, 2007 (Exhibit "A"), but failed to interpose the instant motion to quash until **11 days** after the January 11, 2008 return date of the subpoena. (Exhibits "B" & "C"). Plaintiff's motion to quash is, therefore, untimely and should be denied.

**The Documents Sought By Defendants' Subpoena are Not Privileged and Are Material and Relevant to Their Defense of This Action**

The FRCP allow parties to obtain discovery "regarding any matter, not privileged, that is relevant to the claim or defense of any party." FRCP 26(b)(1). As the documents sought by Defendants' subpoena are not privileged and are material and relevant to this action, Plaintiff's motion to quash should be denied.

Plaintiff, in conclusory fashion, asserts that the employment and academic documents sought by the subpoena are privileged, but fails to identify any recognized statutory or common law privilege that would prevent the disclosure of such materials. Indeed, the Hospital of Saint Raphael has not moved to quash Defendants' subpoena, nor has it claimed that any of the documents sought in Defendants' subpoena are confidential, much less privileged. Absent an identified or recognized privilege, Plaintiff lacks standing to oppose Defendants' subpoena and his motion to quash should be denied. See ADL, LLC v. Tirakian, 2007 U.S. Dist. LEXIS 46198, at \*6-7 (E.D.N.Y. June 26, 2007) ("In the absence of a claim of privilege, a party usually does not have standing to object to a subpoena directed at a non-party witness."); Fox Indus., Inc. v. Gurovich, 2006 U.S. Dist. LEXIS 73035, at \*34 (E.D.N.Y. Oct. 6, 2006) (same).

Even if privileged, the records sought by Defendants are material and relevant and, therefore, discoverable in this action. Dr. Ireh joined NUMC on July 1, 2004 as a fourth year surgical resident but, due to his poor academic and clinical performance, he was not promoted to a fifth-year position. Dr. Ireh claims NUMC's failure to promote him was discriminatory. Prior to coming to NUMC, Dr. Ireh attended the Morehouse School of Medicine (1st and 2nd years) and the Hospital of Saint Raphael (3rd year) for the first three years of his surgical residency. If Dr. Ireh's academic and clinical performance at his prior residencies was poor, such information would support NUMC's position that its decision not to advance him to a fifth-year position was for legitimate, business-related reasons, and not discrimination. As evidenced in employment applications Dr. Ireh completed subsequent to his departure from NUMC, his "reason for leaving" the Hospital of Saint Raphael was because he had "no contract" – the exact same reason he indicated for his departure from NUMC. (Exhibit "D"). Under these circumstances, there is more than adequate reason to believe that Plaintiff's personnel, employment and academic records from the Hospital of Saint Raphael contain information and documentation that is material and relevant to the defense of this matter, to wit, documents and information showing that Dr. Ireh had academic and clinical performance problems in the past. As Plaintiff's prior employment records

Honorable A. Kathleen Tomlinson, U.S.M.J.  
January 25, 2008  
Page 3

are material, relevant and discoverable, his motion to quash should be denied. See Badr v. Liberty Mutual Group, 2007 U.S. Dist. LEXIS 73437, at \*5-8 (D. Conn. Sept. 28, 2007) (denying plaintiff's motion to quash subpoena for prior employment records); Davenport v. Indiana Masonic Home Found., 2003 U.S. Dist. LEXIS 6350, at \*7-10 (S.D. Ind. Mar. 27, 2003) (denying plaintiff's motion to quash subpoena for prior employment records finding "that all of the information sought is discoverable under the broad discovery scheme contemplated by Rule 26").

**Plaintiff's Remaining Arguments Are Entirely Without Merit**

Plaintiff further asserts that Defendants' subpoena should be quashed because (1) the subpoena was issued without the Court's permission, (2) the information sought in the subpoena was not requested in Defendants' document request, and (3) the subpoena requires the disclosure of an un-retained expert's opinion. None of these arguments have any substantive basis or any bearing whatsoever to the instant motion to quash.

Initially, court approval is not required to issue a non-party subpoena during the regular course of discovery. See FRCP 45(a)(3)(A); Calabro v. Stone, 2004 U.S. Dist. LEXIS 26280, at \*1-2 (E.D.N.Y. Oct. 7, 2004) (an attorney may issue a subpoena for a court in a district in which a document production is compelled by the subpoena); 9 Moore's Federal Practice, § 41.11[3] (Supp. 2003) ("As long as the attorney is authorized to practice in the court where the action is pending, the attorney may issue and sign a deposition or production subpoena to be enforced in any district in the United States."). Moreover, Plaintiff has not identified, nor can he, any basis to assert that Defendants are precluded from seeking documents and information from a non-party merely because the same information was not previously sought in a document request. Finally, Defendants' subpoena does not seek the "opinion of an un-retained expert."<sup>1</sup>

For all of the foregoing reasons, Plaintiff's motion to quash should be denied in its entirety.

Respectfully submitted,

/S/

Christopher G. Gegwich (CG-3933)

cc: Gregory G. Smith, Esq. (via ECF)

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<sup>1</sup> Plaintiff's argument further fails because FRCP 45(c)(3)(B)(ii) functions to protect the subject of the subpoena, not an adverse party. See Castaldi v. Land Rover North America, Inc., 2007 U.S. Dist. LEXIS 85809, at \*11-12 (E.D.N.Y. Nov. 21, 2007).

# EXHIBIT A

**NIXON PEABODY**<sup>LLP</sup>  
ATTORNEYS AT LAW

50 Jericho Quadrangle, Suite 300  
Jericho, New York 11753-2728  
(516) 832-7500  
Fax: (516) 832-7555  
Christopher Gegwich  
Direct Dial: (516) 832-7606  
E-Mail: cgegwich@nixonpeabody.com

December 18, 2007

**VIA FACSIMILE AND REGULAR MAIL**

Gregory G. Smith, Esq.  
Gregory G. Smith & Associates  
225 Broadway, Suite 3901  
New York, New York 10007

**RE: Ireh v. Nassau University Medical Center, et al.,**  
**06 Civ. 0009 (LDW) (AKT)**

Dear Mr. Smith:

Enclosed please find two Notices of Subpoena for the Morehouse School of Medicine and the Hospital of Saint Raphael in connection with the above-referenced matter.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Christopher G. Gegwich

Enclosures

cc: Daphne Vlcek  
Law Clerk

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

DR. UGO ALEXIS IREH, M.D.,

Plaintiff,

- VS -

NASSAU UNIVERSITY MEDICAL CENTER  
and NASSAU HEALTH CARE CORPORATION,

Defendants.

**NOTICE OF  
SUBPOENA**

06 Civ. 0009

(LDW) (AKT)

**PLEASE TAKE NOTICE** that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, defendants Nassau University Medical Center and Nassau Health Care Corporation, through their counsel, Nixon Peabody LLP, intend to serve the annexed Subpoena for the production of documents on non-party Morehouse School of Medicine, 720 Westview Drive, S.W., Atlanta, Georgia 30310, on December 28, 2007.

Dated: December 18, 2007  
Jericho, New York

**NIXON PEABODY LLP**

By: 

Christopher G. Gegwich (CG-3933)

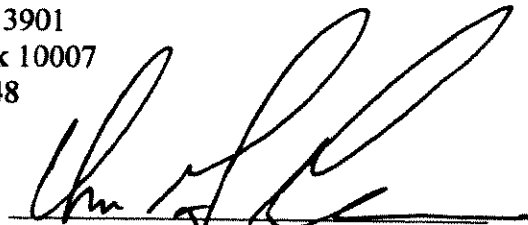
50 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
(516) 832-7500  
[cgegwich@nixonpeabody.com](mailto:cgegwich@nixonpeabody.com)

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

This is to certify that on December 18, 2007, I caused a copy of Defendants' Notice of Subpoena, in the matter captioned as Ireh v. Nassau University Medical Center, et al., 06 Civ. 0009 (LDW) (AKT), to be served by facsimile and regular mail on plaintiff as follows:

Gregory G. Smith, Esq.  
Gregory G. Smith & Associates  
225 Broadway, Suite 3901  
New York, New York 10007  
Fax: (212) 267-2048

  
Christopher G. Gegwich (CG 3933)

Dated: December 18, 2007

Issued by the  
**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF NEW YORK**

DR. UGO ALEXIS IREH, M.D.

v.

**SUBPOENA IN A CIVIL CASE**

Case Number: 06 Civ. 0009

NASSAU UNIVERSITY MEDICAL CENTER and  
 NASSAU HEALTH CARE CORPORATION

TO: Felicia Tucker-Lively  
 Program Director, Surgery  
 Morehouse School of Medicine  
 720 Westview Drive, S.W.  
 Atlanta, Georgia 30310

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

<b>PLACE OF TESTIMONY</b>	<b>COURTROOM</b>
	<b>DATE AND TIME</b>

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case, which shall be recorded by a stenographer and/or by audio or video.

<b>PLACE OF DEPOSITION</b>	<b>DATE AND TIME</b>
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☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
**See attached Exhibit "A".**

<b>PLACE</b> Nixon Peabody LLP 50 Jericho Quadrangle, Suite 300 Jericho, New York 11753 Attn: Christopher G. Gegwich, Esq.	<b>DATE AND TIME</b>  January 11, 2008 at 10:00 a.m.
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☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

<b>PREMISES</b>	<b>DATE AND TIME</b>
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

<b>ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)</b>	<b>DATE</b> December 28, 2007
--	----------------------------------

**ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER**

Christopher G. Gegwich (CG-3933)  
 Nixon Peabody LLP, Attorneys for Defendants  
 50 Jericho Quadrangle, Suite 300, Jericho, New York 11753  
 Telephone: (516) 832-7500

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)



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**PROOF OF SERVICE**


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DATE

PLACE

**SERVED**

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

---

**DECLARATION OF SERVER**


---

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

SIGNATURE OF SERVER \_\_\_\_\_

ADDRESS OF SERVER \_\_\_\_\_  
\_\_\_\_\_

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Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises – or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such person may in order to attend trial be commanded to travel from any such place within the time in which the trial is held.

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limit provided by clause (ii) of subparagraph (c)(3)(A).

**EXHIBIT A**  
**Documents to be Produced**

All documents in your possession concerning the employment of plaintiff Ugo Alexis Ireh, M.D. (SSN 254-67-8692) ("Dr. Ireh"), including, but not limited to, Dr. Ireh's personnel file, academic file, and departmental file, as well as any documents concerning his application for employment and/or appointment as an academic resident, job duties and responsibilities, changes in position, transfers, promotions, compensation, benefits, attendance history, performance history (including performance and academic evaluations), discipline history, and allegations and/or complaints of discrimination and/or harassment, if any.

**Definition of "Documents"**

The term "documents" shall mean the original and all drafts of all written, graphic or recorded matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received, or otherwise), including, without limitation, any paper, book, booklet, e-mail, periodical, written description, account, photograph, blue print, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcription, hearing, meeting, study, note, notation, memo book entry, journal entry, diary entry, board minutes, board resolution, working paper, summary, intraoffice communication, diary, chart, index sheet, computer software, computer diskette, check, check stub, delivery ticket, bill of lading, invoice, records or recording, telephone message pad, telephone message form books or summary of any telephone or other conversations, of any interview, or of any conference, or of any written, recorded, transcribed, punched, taped, videotaped, filmed or graphic matter, or any audio or video recordings; or any other data compilation from which information can be obtained, translated, transmitted or transcribed.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

DR. UGO ALEXIS IREH, M.D.,

Plaintiff,

- vs -

NASSAU UNIVERSITY MEDICAL CENTER  
and NASSAU HEALTH CARE CORPORATION,

Defendants.

**NOTICE OF  
SUBPOENA**

06 Civ. 0009

(LDW) (AKT)

**PLEASE TAKE NOTICE** that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, defendants Nassau University Medical Center and Nassau Health Care Corporation, through their counsel, Nixon Peabody LLP, intend to serve the annexed Subpoena for the production of documents on non-party Hospital of Saint Raphael, 1450 Chapel Street, New Haven, Connecticut 06511, on December 28, 2007.

Dated: December 18, 2007  
Jericho, New York

**NIXON PEABODY LLP**

By: 

Christopher G. Gegwich (CG-3933)


50 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
(516) 832-7500  
[cgegwich@nixonpeabody.com](mailto:cgegwich@nixonpeabody.com)

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

This is to certify that on December 18, 2007, I caused a copy of Defendants' Notice of Subpoena, in the matter captioned as Ireh v. Nassau University Medical Center, et al., 06 Civ. 0009 (LDW) (AKT), to be served by facsimile and regular mail on plaintiff as follows:

Gregory G. Smith, Esq.  
Gregory G. Smith & Associates  
225 Broadway, Suite 3901  
New York, New York 10007  
Fax: (212) 267-2048

  
Christopher G. Gegwich (CG 3933)

Dated: December 18, 2007

Issued by the  
**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF NEW YORK**

DR. UGO ALEXIS IREH, M.D.

v.

**SUBPOENA IN A CIVIL CASE**

Case Number: 06 Civ. 0009

NASSAU UNIVERSITY MEDICAL CENTER and  
 NASSAU HEALTH CARE CORPORATION

TO: Barbara Dahl  
 Office of Medical Staff  
 Hospital of Saint Raphael  
 1450 Chapel Street  
 New Haven, Connecticut 06511

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

**PLACE OF TESTIMONY****COURTROOM****DATE AND TIME**

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case, which shall be recorded by a stenographer and/or by audio or video.

**PLACE OF DEPOSITION****DATE AND TIME**

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
**See attached Exhibit "A".**

**PLACE**

Nixon Peabody LLP  
 50 Jericho Quadrangle, Suite 300  
 Jericho, New York 11753  
 Attn: Christopher G. Gegwich, Esq.

**DATE AND TIME**

January 11, 2008 at 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

**PREMISES****DATE AND TIME**

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

**ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF  
 ATTORNEY FOR PLAINTIFF OR DEFENDANT)**

**DATE**

December 28, 2007

**ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER**

Christopher G. Gegwich (CG-3933)  
 Nixon Peabody LLP, Attorneys for Defendants  
 50 Jericho Quadrangle, Suite 300, Jericho, New York 11753  
 Telephone: (516) 832-7500

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

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**PROOF OF SERVICE**


---

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

---

**DECLARATION OF SERVER**


---

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

SIGNATURE OF SERVER \_\_\_\_\_

ADDRESS OF SERVER \_\_\_\_\_  
\_\_\_\_\_

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Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

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(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises – or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held.

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limit provided by clause (ii) of subparagraph (c)(3)(A).



**EXHIBIT A**  
**Documents to be Produced**

All documents in your possession concerning the employment of plaintiff Ugo Alexis Ireh, M.D. (SSN 254-67-8692) ("Dr. Ireh"), including, but not limited to, Dr. Ireh's personnel file, academic file, and departmental file, as well as any documents concerning his application for employment and/or appointment as an academic resident, job duties and responsibilities, changes in position, transfers, promotions, compensation, benefits, attendance history, performance history (including performance and academic evaluations), discipline history, and allegations and/or complaints of discrimination and/or harassment, if any.

**Definition of "Documents"**

The term "documents" shall mean the original and all drafts of all written, graphic or recorded matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received, or otherwise), including, without limitation, any paper, book, booklet, e-mail, periodical, written description, account, photograph, blue print, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcription, hearing, meeting, study, note, notation, memo book entry, journal entry, diary entry, board minutes, board resolution, working paper, summary, intraoffice communication, diary, chart, index sheet, computer software, computer diskette, check, check stub, delivery ticket, bill of lading, invoice, records or recording, telephone message pad, telephone message form books or summary of any telephone or other conversations, of any interview, or of any conference, or of any written, recorded, transcribed, punched, taped, videotaped, filmed or graphic matter, or any audio or video recordings; or any other data compilation from which information can be obtained, translated, transmitted or transcribed.

**NIXON PEABODY**<sub>LLP</sub>

Attorneys at Law

50 Jericho Quadrangle  
Suite 300  
Jericho, New York 11753-2728  
(516) 832-7500

Fax: (516) 832-7555

**PRIVILEGE AND CONFIDENTIALITY NOTICE**

The information in this fax is intended for the named recipients only. It contains privileged and confidential matter. If you have received this fax in error, please notify us immediately by a collect telephone call to (516) 832-7500 and return the original to the sender by mail. We will reimburse you for postage. Do not disclose the contents to anyone. Thank you.

**FAX**

To:	Company:	Fax #:	Telephone #:
1) Gregory G. Smith, Esq.		(212) 267-2048	
2)			
3)			
4)			
5)			

INTERNATIONAL PHONE NUMBERS MUST INCLUDE COUNTRY &amp; CITY CODE. SEE LOCAL WHITE PAGES FOR CODES NEEDED.

<b>From:</b> Christopher G. Gegwich	<b>Date:</b> December 18, 2007	<b>No. of Pages:</b> 12 (including this page)	070478/070021
<b>Comments:</b>			

Original of the transmitted document will be sent by:

☐ First Class Mail☐ Overnight Mail☐ Hand Delivery☐ This transmission will be the only form of delivery of this document

**IF YOU DO NOT RECEIVE ALL OF THESE PAGES, PLEASE CONTACT THE FAX ADMINISTRATOR AS SOON AS POSSIBLE AT: (516) 832-7500. THANK YOU.**

CONFIRMATION: DATE SENT \_\_\_\_\_ TIME \_\_\_\_\_ BY \_\_\_\_\_



## Transmission Report

Date/Time  
Local ID 1  
Local ID 2

12-18-2007  
1 516 832 7555

05:33:30 p.m.

Transmit Header Text

Local Name 1

Local Name 2

NIXON PEABODY LLP

This document : Confirmed  
(reduced sample and details below)

Document size : 8.5"x11"

# NIXON PEABODY LLP

Attorneys at Law

50 Jericho Quadrangle  
Suite 300  
Jericho, New York 11753-2728  
(516) 832-7500

Fax: (516) 832-7555

## PRIVILEGE AND CONFIDENTIALITY NOTICE

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## FAX

To:	Company:	Fax #:	Telephone #:
1) Gregory G. Smith, Esq.		(212) 267-2048	
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INTERNATIONAL PHONE NUMBERS MUST INCLUDE COUNTRY & CITY CODE. SEE LOCAL WHITE PAGES FOR CORDS NEEDED.

From: Christopher G. Gegwich	Date: December 18, 2007	No. of Pages: 12 (including this page)	070478/070021
Comments:			

Original of the transmitted document will be sent by:  
☐ First Class Mail    ☐ Overnight Mail    ☐ Hand Delivery    ☐ This transmission will be the only form of delivery of this document

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CONFIRMATION: DATE SENT \_\_\_\_\_ TIME \_\_\_\_\_ BY \_\_\_\_\_

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Total Pages Scanned : 12

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No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	650	(212)267-2048	05:25:44 p.m. 12-18-2007	00:06:52	12/12	1	EC	HS	CP9600

### Abbreviations:

HS: Host send  
HR: Host receive  
WS: Waiting send

PL: Polled local  
PR: Polled remote  
MS: Mailbox save

MP: Mailbox print  
CP: Completed  
FA: Fail

TU: Terminated by user  
TS: Terminated by system  
RP: Report

G3: Group 3  
EC: Error Correct

# EXHIBIT B

**NIXON PEABODY**<sup>LLP</sup>  
ATTORNEYS AT LAW

50 Jericho Quadrangle, Suite 300  
Jericho, New York 11753-2728  
(516) 832-7500  
Fax: (516) 832-7555  
Direct Dial: (516) 832-7606  
E-Mail: cgegwich@nixonpeabody.com

December 31, 2007

Gregory G. Smith, Esq.  
Gregory G. Smith & Associates  
225 Broadway, Suite 3901  
New York, New York 10007

**RE: Ireh v. Nassau University Medical Center, et al.,**  
**06 Civ. 0009 (LDW) (AKT)**

Dear Mr. Smith:

Enclosed please find copies of subpoenas that were recently served on the Morehouse School of Medicine and the Hospital of Saint Raphael in connection with the above-referenced matter.

As set forth in my letters of September 17, 2007 and November 5, 2007, Rule 33(b)(2) of the Federal Rules of Civil Procedure requires that the "answers [to the interrogatories] are to be signed by the person making them." As Plaintiff's Interrogatory Response did not include a verification from your client, kindly forward one to my attention at your earliest convenience.

Should you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

  
Christopher G. Gegwich

Enclosures

cc: Amy L. Ventry, Esq.  
Daphne Vlcek, Esq.

Issued by the  
**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF NEW YORK**

DR. UGO ALEXIS IREH, M.D.

v.

**SUBPOENA IN A CIVIL CASE**

Case Number: 06 Civ. 0009

NASSAU UNIVERSITY MEDICAL CENTER and  
 NASSAU HEALTH CARE CORPORATION

TO: Barbara Dahl  
 Office of Medical Staff  
 Hospital of Saint Raphael  
 1450 Chapel Street  
 New Haven, Connecticut 06511

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case, which shall be recorded by a stenographer and/or by audio or video.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 See attached Exhibit "A".

PLACE

Nixon Peabody LLP  
 50 Jericho Quadrangle, Suite 300  
 Jericho, New York 11753  
 Attn: Christopher G. Gegwich, Esq.

DATE AND TIME

January 11, 2008 at 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF  
 ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

December 28, 2007

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Christopher G. Gegwich (CG-3833)  
 Nixon Peabody LLP, Attorneys for Defendants  
 50 Jericho Quadrangle, Suite 300, Jericho, New York 11753  
 Telephone: (516) 832-7500

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

**EXHIBIT A**  
**Documents to be Produced**

All documents in your possession concerning the employment of plaintiff Ugo Alexis Ireh, M.D. (SSN 254-67-8692) ("Dr. Ireh"), including, but not limited to, Dr. Ireh's personnel file, academic file, and departmental file, as well as any documents concerning his application for employment and/or appointment as an academic resident, job duties and responsibilities, changes in position, transfers, promotions, compensation, benefits, attendance history, performance history (including performance and academic evaluations), discipline history, and allegations and/or complaints of discrimination and/or harassment, if any.

**Definition of "Documents"**

The term "documents" shall mean the original and all drafts of all written, graphic or recorded matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received, or otherwise), including, without limitation, any paper, book, booklet, e-mail, periodical, written description, account, photograph, blue print, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcription, hearing, meeting, study, note, notation, memo book entry, journal entry, diary entry, board minutes, board resolution, working paper, summary, intraoffice communication, diary, chart, index sheet, computer software, computer diskette, check, check stub, delivery ticket, bill of lading, invoice, records or recording, telephone message pad, telephone message form books or summary of any telephone or other conversations, of any interview, or of any conference, or of any written, recorded, transcribed, punched, taped, videotaped, filmed or graphic matter, or any audio or video recordings; or any other data compilation from which information can be obtained, translated, transmitted or transcribed.

Issued by the  
**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF NEW YORK**

DR. UGO ALEXIS IREH, M.D.

v.

**SUBPOENA IN A CIVIL CASE**

Case Number: 06 Civ. 0009

NASSAU UNIVERSITY MEDICAL CENTER and  
 NASSAU HEALTH CARE CORPORATION

TO: Felicia Tucker-Lively  
 Program Director, Surgery  
 Morehouse School of Medicine  
 720 Westview Drive, S.W.  
 Atlanta, Georgia 30310

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

**PLACE OF TESTIMONY****COURTROOM****DATE AND TIME**

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case, which shall be recorded by a stenographer and/or by audio or video.

**PLACE OF DEPOSITION****DATE AND TIME**

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 See attached Exhibit "A".

**PLACE**

Nixon Peabody LLP  
 50 Jericho Quadrangle, Suite 300  
 Jericho, New York 11753  
 Attn: Christopher G. Gegwich, Esq.

**DATE AND TIME**

January 11, 2008 at 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

**PREMISES****DATE AND TIME**

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TELEPHONE NUMBER IF  
 ATTORNEY FOR PLAINTIFF OR DEFENDANT

**DATE**

December 28, 2007

**ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER**

Christopher G. Gegwich (CG-3933)  
 Nixon Peabody LLP, Attorneys for Defendants  
 50 Jericho Quadrangle, Suite 300, Jericho, New York 11753  
 Telephone: (516) 832-7500

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

**EXHIBIT A**  
**Documents to be Produced**

All documents in your possession concerning the employment of plaintiff Ugo Alexis Ireh, M.D. (SSN 254-67-8692) ("Dr. Ireh"), including, but not limited to, Dr. Ireh's personnel file, academic file, and departmental file, as well as any documents concerning his application for employment and/or appointment as an academic resident, job duties and responsibilities, changes in position, transfers, promotions, compensation, benefits, attendance history, performance history (including performance and academic evaluations), discipline history, and allegations and/or complaints of discrimination and/or harassment, if any.

**Definition of "Documents"**

The term "documents" shall mean the original and all drafts of all written, graphic or recorded matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received, or otherwise), including, without limitation, any paper, book, booklet, e-mail, periodical, written description, account, photograph, blue print, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcription, hearing, meeting, study, note, notation, memo book entry, journal entry, diary entry, board minutes, board resolution, working paper, summary, intraoffice communication, diary, chart, index sheet, computer software, computer diskette, check, check stub, delivery ticket, bill of lading, invoice, records or recording, telephone message pad, telephone message form books or summary of any telephone or other conversations, of any interview, or of any conference, or of any written, recorded, transcribed, punched, taped, videotaped, filmed or graphic matter, or any audio or video recordings; or any other data compilation from which information can be obtained, translated, transmitted or transcribed.

# **EXHIBIT C**



**NIXON PEABODY**<sup>LLP</sup>  
ATTORNEYS AT LAW

50 Jericho Quadrangle, Suite 300  
Jericho, New York 11753-2728  
(516) 832-7500  
Fax: (516) 832-7555  
Direct Dial: (516) 832-7606  
E-Mail: cgegwich@nixonpeabody.com

January 8, 2008

Gregory G. Smith, Esq.  
Gregory G. Smith & Associates  
225 Broadway, Suite 3901  
New York, New York 10007

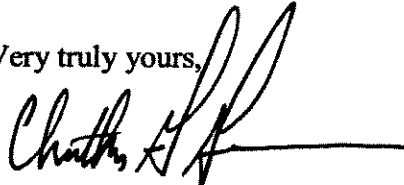
**RE: Ireh v. Nassau University Medical Center, et al.,**  
**06 Civ. 0009 (LDW) (AKT)**

Dear Mr. Smith:

Enclosed please find copies of subpoenas that were recently served on the Morehouse School of Medicine and the Hospital of Saint Raphael in connection with the above-referenced matter.

Should you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,



Christopher G. Gegwich

Enclosures

cc: Amy L. Ventry, Esq.  
Daphne Vlcek, Esq.

Issued by the  
**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF GEORGIA**

DR. UGO ALEXIS IREH, M.D.

v.

**SUBPOENA IN A CIVIL CASE**

Case Number: 06 Civ. 0009

NASSAU UNIVERSITY MEDICAL CENTER and  
 NASSAU HEALTH CARE CORPORATION

TO: Nicole Miller, Esq.  
 Associate General Counsel  
 Morehouse School of Medicine  
 720 Westview Drive, S.W.  
 Atlanta, Georgia 30310

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case, which shall be recorded by a stenographer and/or by audio or video.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 See attached Exhibit "A".

PLACE

U.S. District Court, Northern District of Georgia - Atlanta Division  
 Richard B. Russell Federal Building and Courthouse  
 75 Spring Street SW, Room 2211  
 Atlanta, Georgia 30303

DATE AND TIME

January 31, 2008 at 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF  
 ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

January 7, 2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Christopher B. Gegwich (SG-3933)  
 Nixon Peabody LLP, Attorneys for Defendants  
 50 Jericho Quadrangle, Suite 300, Jericho, New York 11753  
 Telephone: (516) 832-7500

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

## PROOF OF SERVICE

DATE	PLACE
<b>SERVED</b>	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises – or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such person may in order to attend trial be commanded to travel from any such place within the time in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(ii) requires disclosure of an unretained expert's opinion or information not relating to specific events or occurrences in dispute and resulting from the expert's study made at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation material, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. Adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limit provided by clause (ii) of subparagraph (c)(3)(A).

**EXHIBIT A**  
**Documents to be Produced**

All documents in your possession concerning the employment of plaintiff Ugo Alexis Ireh, M.D. (SSN 254-67-8692) ("Dr. Ireh"), including, but not limited to, Dr. Ireh's personnel file, academic file, and departmental file, as well as any documents concerning his application for employment and/or appointment as an academic resident, job duties and responsibilities, changes in position, transfers, promotions, compensation, benefits, attendance history, performance history (including performance and academic evaluations), discipline history, and allegations and/or complaints of discrimination and/or harassment, if any.

**Definition of "Documents"**

The term "documents" shall mean the original and all drafts of all written, graphic or recorded matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received, or otherwise), including, without limitation, any paper, book, booklet, e-mail, periodical, written description, account, photograph, blue print, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcription, hearing, meeting, study, note, notation, memo book entry, journal entry, diary entry, board minutes, board resolution, working paper, summary, intraoffice communication, diary, chart, index sheet, computer software, computer diskette, check, check stub, delivery ticket, bill of lading, invoice, records or recording, telephone message pad, telephone message form books or summary of any telephone or other conversations, of any interview, or of any conference, or of any written, recorded, transcribed, punched, taped, videotaped, filmed or graphic matter, or any audio or video recordings; or any other data compilation from which information can be obtained, translated, transmitted or transcribed.

Issued by the  
**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF NEW YORK**

DR. UGO ALEXIS IREH, M.D.

v.

**SUBPOENA IN A CIVIL CASE**

Case Number: 06 Civ. 0009

NASSAU UNIVERSITY MEDICAL CENTER and  
 NASSAU HEALTH CARE CORPORATION

TO: Janeanne Lubin-Szafranski, Esq.  
 Vice President and General Counsel  
 Hospital of Saint Raphael  
 1450 Chapel Street  
 New Haven, Connecticut 06511

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case, which shall be recorded by a stenographer and/or by audio or video.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
**See attached Exhibit "A".**

PLACE

Nixon Peabody LLP  
 50 Jericho Quadrangle, Suite 300  
 Jericho, New York 11753  
 Attn: Christopher G. Gegwich, Esq.

DATE AND TIME

January 11, 2008 at 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

January 4, 2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Christopher G. Gegwich (CG-3933)  
 Nixon Peabody LLP, Attorneys for Defendants  
 50 Jericho Quadrangle, Suite 300, Jericho, New York 11753  
 Telephone: (516) 832-7500

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)



# PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

### (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises – or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held.

(iii) requires disclosure of privileged or other protected matter and no exception waiver applies; or (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limit provided by clause (ii) of subparagraph (c)(3)(A).

**EXHIBIT A**  
**Documents to be Produced**

All documents in your possession concerning the employment of plaintiff Ugo Alexis Ireh, M.D. (SSN 254-67-8692) ("Dr. Ireh"), including, but not limited to, Dr. Ireh's personnel file, academic file, and departmental file, as well as any documents concerning his application for employment and/or appointment as an academic resident, job duties and responsibilities, changes in position, transfers, promotions, compensation, benefits, attendance history, performance history (including performance and academic evaluations), discipline history, and allegations and/or complaints of discrimination and/or harassment, if any.

**Definition of "Documents"**

The term "documents" shall mean the original and all drafts of all written, graphic or recorded matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received, or otherwise), including, without limitation, any paper, book, booklet, e-mail, periodical, written description, account, photograph, blue print, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcription, hearing, meeting, study, note, notation, memo book entry, journal entry, diary entry, board minutes, board resolution, working paper, summary, intraoffice communication, diary, chart, index sheet, computer software, computer diskette, check, check stub, delivery ticket, bill of lading, invoice, records or recording, telephone message pad, telephone message form books or summary of any telephone or other conversations, of any interview, or of any conference, or of any written, recorded, transcribed, punched, taped, videotaped, filmed or graphic matter, or any audio or video recordings; or any other data compilation from which information can be obtained, translated, transmitted or transcribed.

# EXHIBIT D



**APPLICATION**  
**ST. JOHN'S RIVERSIDE HOSPITAL ANDRUS PAVILION/PARK CARE /MICHAEL N. MALOTZ NURSING PAVILION**  
**COMMUNITY HOSPITAL AT DOBBS FERRY**

PLEASE PRINT ALL INFORMATION:

Date: 8/31/05

As equal opportunity employers St. John's Riverside Hospital /Michael Malotz Skilled Nursing Pavilion / Community Hospital at Dobbs Ferry does not discriminate with regard to hiring or terms of employment on the basis of race, creed, color, national origin, sex, marital status, age, sexual orientation, or citizenship.

Applicants will be provided with any assistance or special accommodation, in preparing this form, or in participation in any aspect of the hiring process. Please communicate your need to a Human Resources representative.

NAME: IREH UGO A.  
 LAST FIRST MIDDLE INITIAL

ADDRESS: 200 CARMAN AVENUE # 7B  
 STREET

EAST MEADOW NY 11554  
 CITY STATE ZIP CODE

Ugoireh@gmail.com  
 E-MAIL ADDRESS

TELEPHONE NO: (516) 794-2792 S.S. # 254-67-8692 ARE YOU 18 YRS OR OLDER? YES

DO YOU HAVE THE LEGAL RIGHT TO WORK IN THE UNITED STATES? YES PROOF OF YOUR RIGHT TO WORK IN THE U.S. WILL BE REQUIRED WITHIN THREE (3) DAYS OF HIRE IF A JOB OFFER IS MADE.

HAVE YOU EVER BEEN CONVICTED OF A CRIME, EXCLUDING MINOR TRAFFIC OFFENSES? YES: \_\_\_\_\_ NO: ✓  
 IF YES, EXPLAIN: \_\_\_\_\_  
 A CONVICTION WILL NOT NECESSARILY DISQUALIFY YOU FROM EMPLOYMENT.

WERE YOU FORMERLY EMPLOYED AT ANY OF THE ABOVE HOSPITALS? YES: (NO) IF SO, WHICH?

DATES OF EMPLOYMENT: \_\_\_\_\_ UNDER WHAT NAME: \_\_\_\_\_

DO YOU HAVE RELATIVES IN OUR EMPLOY? YES: (NO) IF SO, LIST NAMES: \_\_\_\_\_

HOW DID YOU HEAR ABOUT THE POSITION? CURRENT EMPLOYEE: \_\_\_\_\_  
 NEWSPAPER? \_\_\_\_\_ WHICH NEWSPAPER? \_\_\_\_\_  
 OTHER SOURCE? ✓ EXPLAIN: MED-CAL

WILL YOU BE ABLE TO PERFORM THE ESSENTIAL FUNCTIONS OF THE JOB FOR WHICH YOU APPLIED WITH OR WITHOUT REASONABLE ACCOMMODATION? YES NO: \_\_\_\_\_

POSITION DESIRED: HOUSE PHYSICIAN SALARY REQUIREMENTS: \$70.00/HR

OTHER POSITION: \_\_\_\_\_ REGULAR: \_\_\_\_\_ FULL TIME: \_\_\_\_\_

SHIFT PREFERRED: \_\_\_\_\_ OTHER: \_\_\_\_\_ TEMPORARY: \_\_\_\_\_ PART TIME: \_\_\_\_\_

**RECORD OF EDUCATION:**

LEVEL	NAME	LOCATION	COURSE/DEGREE	GRAD YES/NO
HIGH SCHOOL	NATIONAL GRAMMER SCH. NIKE	ENUGU - NIGERIA	GCE	YES
COLLEGE	GEORGIA ST. UNIVERSITY	ATLANTA, GA	B.S	YES
GRADUATE OR (1) OTHER SCHOOL (2)	MOREHOUSE SCH. MEDICINE	ATLANTA, GA	M.D	YES

IST ANY OTHER EDUCATION OR TRAINING: \_\_\_\_\_

SJR 0002

LIST BELOW, ALL LICENSES AND PERMITS THAT PERTAIN TO THIS APPLICATION FOR EMPLOYMENT:

TYPE OF LICENSE OR PERMIT	STATE ISSUED	NUMBER	EXPIRATION DATE
MEDICAL	NY	232214	11/06
MEDICAL	GA	055851	12/05

Are you currently under investigation for or have you been convicted of any abuse, neglect, or mistreatment in a residential health care facility, nursing home, hospital, home care, or any other health care provider setting?

YES NO

If yes, explain:

## EMPLOYMENT HISTORY: (LIST INDICATING LAST EMPLOYMENT DATE FIRST)

DATE FROM TO	EMPLOYER NAME OF SUPV.	ADDRESS & TELEPHONE	POSITION AND/OR CLINICAL AREA	SALARY	REASON FOR LEAVING
7/2004 - 6/05	MASSUA UNIVERSITY MED. CENTER 2201 HEMPSTEAD TPK EAST MEADOW, NY 11554	516-572-6703 - DR. ANGUS	SURGICAL RESIDENT	\$48K	NO CONTRACT
7/2003 - 6/04	QUEEN'S HOSPITAL CENTER JAMAICA, NY - DR. MOREL	718-893-4640	SURGICAL HOUSE STAFF	\$55K	RESIDENTY
7/2002 - 6/2003	HOSPITAL OF ST. RAPHAEL, 1450 CHAPEL ST., NEW HAVEN, CT		RESIDENT	\$45K	NO CONTRACT

I understand that should I accept employment with St. John's Riverside Hospital / Michael N. Malotz Skilled Nursing Pavilion/Community Hospital at Dobbs Ferry falsification or omission of any information called for on this application form may cause immediate discharge. I further realize that if an offer of employment is given, employment is conditional upon the successful completion of a physical examination, satisfactory references and completion of the hospital-wide orientation program within the first two months of employment.

SIGNATURE OF APPLICANT: U. WatrelumDATE: 8/30/05

## FOR HUMAN RESOURCE USE ONLY

## REFERENCES:

NAME OF COMPANY AND SUPERVISOR	PHONE / MAIL	DATE	REMARKS
MASSUA UNIVERSITY	<u>ml</u>		
QUEEN'S HOSPITAL	<u>morel</u>		
HOSPITAL OF ST. RAPHAEL	<u>ml</u>		

ST. JOHN'S RIVERSIDE HOSPITAL  
ANDRUS PAVILION  
967 NO. BROADWAY  
YONKERS, NY 10701  
PHONE: (914) 964-4444  
FAX: (914) 964-4896

ST. JOHN'S RIVERSIDE HOSPITAL  
PARK CARE PAVILION  
2 PARK AVENUE  
YONKERS, NY 10703  
PHONE: (914) 964-7300

MICHAEL N. MALOTZ SKILLED NURSING  
PAVILION  
120 ODELL AVENUE  
YONKERS, NY 10701  
PHONE: (914) 964-3333

COMMUNITY HOSPITAL AT DOBBS FERRY  
128 ASHFORD AVENUE  
DOBBS FERRY, NY 10522  
PHONE: (914) 693-0700

**APPLICATION FOR EMPLOYMENT**

**SAINT JOSEPH'S MEDICAL CENTER**  
**127 SOUTH BROADWAY**  
**YONKERS, NY 10701**

An equal opportunity employer. The Medical Center does not discriminate with regard to hiring or terms of employment on the basis of race, creed color, national origin, sex, marital status, disability or age.

Name IREH UGO A Date 9/1/05  
 Last First Middle  
 Address 200 CARMAN AVE. #7B, EAST MEADOW NY 11554  
 Number Street City State Zip Code  
 Telephone No. (516) 794-2792 Lived at address, how long? 2 YEARS  
 Social Security No. 254-67-8692 Are you over the age of 38  
 Are you a U.S. Citizen YES If not, Type of Visa \_\_\_\_\_ Reg.# \_\_\_\_\_  
 Have you ever been convicted of a crime, excluding minor traffic offenses? NO  
 If yes, explain N/A

Position Desired HOUSE OFFICER Salary Requirement \$70/HR  
 Other Position \_\_\_\_\_ Permanent \_\_\_\_\_ Full Time \_\_\_\_\_  
 Shift Preferred VARIES Other \_\_\_\_\_ Temporary \_\_\_\_\_ Part Time \_\_\_\_\_  
 Are you able to work weekends? YES If Part Time days available? \_\_\_\_\_  
 Referred by: MEDICAL If Temporary, how long? \_\_\_\_\_

Have you previously applied for a position at St. Joseph's Hospital or St. Joseph's Nursing Home? NO  
 Have you been previously employed by St. Joseph's Hospital or Nursing Home? NO  
 If previously employed, state when and in what capacity. From N/A To \_\_\_\_\_  
 Position and/or Title N/A  
 Reason for leaving N/A

U.S. Military Service Record: NONE  
 Branch \_\_\_\_\_ Date Entered \_\_\_\_\_ Date of Discharged \_\_\_\_\_  
 Service School \_\_\_\_\_ Type of Discharge \_\_\_\_\_

## EMPLOYMENT HISTORY: (List last employer first)

DATES OF EMPLOYMENT From: 7/04 To: 6/05		EMPLOYER'S NAME & ADDRESS NASSAU UNIVERSITY MEDICAL CENTER 2201 HEMPSTEAD TURNPIKE, NY 11554	
FINAL SALARY \$49,000/YR	JOB TITLE SURGICAL RESIDENT	REASON FOR LEAVING NO CONTRACT	
DESCRIPTION OF DUTIES SENIOR SURGICAL RESIDENT			
SUPERVISOR'S NAME DR. ANGUS		JOB TITLE CHAIRMAN	TELEPHONE 516 572 6703
DATES OF EMPLOYMENT From: 7/03 To: 6/04		EMPLOYER'S NAME & ADDRESS QUEEN'S HOSPITAL CENTER, JAMAICA, NY	
FINAL SALARY \$55,200	JOB TITLE SURGICAL HOUSE STAFF	REASON FOR LEAVING END OF SVC YEAR	
DESCRIPTION OF DUTIES: COVERING SURGICAL HOUSE OFFICER FOR HOSPITAL			
SUPERVISOR'S NAME DR. MOREL		JOB TITLE DIRECTOR, SURG. EDU	TELEPHONE 718 883 4640
DATES OF EMPLOYMENT From: 7/02 To: 6/03		EMPLOYER'S NAME & ADDRESS ST. RAPHAEL'S HOSPITAL NEW HAVEN, CT	
FINAL SALARY \$48,000	JOB TITLE SURGICAL RESIDENT	REASON FOR LEAVING NO CONTRACT	
DESCRIPTION OF DUTIES: JUNIOR SURGICAL RESIDENT			
SUPERVISOR'S NAME DR. CIARDELLO		JOB TITLE DIRECTOR	TELEPHONE

## RECORD OF EDUCATION

LEVEL	NAME	LOCATION	COURSE/DEGREE
HIGH SCHOOL	NIKE GRAMMER	ENUGU - NIGERIA	GCE
COLLEGE	GIA STATE UNIV.	ATLANTA, GA	B.S.
GRADUATE OR (1) OTHER SCHOOL (2)	MOREHOUSE SCH. MEDICINE	ATLANTA, GA	M.D.

List below all licenses and permits that pertain to this application for employment

TYPE OF LICENSE OR PERMIT	STATE ISSUED	NUMBER	EXPIRATION DATE
MEDICAL	NY	232214	11/6

DESCRIBE EFFORTS THAT YOU HAVE RECENTLY MADE TO FIND A POSITION

I hereby certify that the facts set forth in the above employment application are true and complete to the best of my knowledge. I understand that if employed, falsified statements on this application shall be considered sufficient cause for dismissal. I understand that my employment is subject to satisfactory completion of an employee health examination positive references and criminal background check if unlicensed direct care giver for nursing home. I further certify that I have never been sanctioned by Medicare, Medicaid or found guilty of Medicare, Medicaid fraud or any other Federal Health Care Program and that no such charge is pending.

Signature of Applicant: Agathe Date: 9/1/05

## FOR DEPARTMENT USE ONLY

PER DIEM MOONLIGHTER  
SALARY: \$55.00/HR  
HRS: VARIABLE  
NO BENEFITS

## Human Resources

Use Only

- ☐ 1  
☐ 2  
☐ 3  
☐ 4

T/O#: \_\_\_\_\_ Grade \_\_\_\_\_